

Title : Dutiability of miscellaneous charges relating to imported fabric

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HQ 54-353 21FEB 1992

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CATEGORY: Valuation

Julie White

Nordstrom, Inc.

A/P Import Office

P.C. Box 870

Seattle, WA 98111

RE: Dutiability of miscellaneous charges relating to imported fabric

Dear Ms. White:

This is in response your letter of July -illegible-, 1991 requesting a binding ruling on whether certain charges relating to imported fabric are dutiable.

FACTS:

According to your letter, Nordstrom, Inc. (hereinafter referred to as "the importer") purchases fabric from a foreign vendor and subsequently gives it to a foreign cut, make and trim (hereinafter "CMT") vendor to be used in the assembly of apparel. The fabric is sometimes insured and stored in warehouses abroad, until the CMT vendor starts production. The warehouse storage and insurance is at the importer's expense. Sometimes the fabric is stored in warehouses of the CMT vendor and sometimes it is stored in warehouses of a third unrelated party. In some instances, fabric that was purchased and stored is never used. This is due to a change in the importer's needs rather than to any defect. Such fabric is subsequently sold overseas at a much lower cost than that for which it was purchased. In addition, the importer receives a cut scale along with the commercial invoice from the CMT vendor. The cut scale indicates the quality and value of the fabric used and also indicates the number of pieces cut as compared to the number of pieces ultimately sent to the importer. (It is noted in your submission that the reason for a discrepancy between pieces cut and pieces sent is defective fabric, e.g., stain, tear, cutting error).

ISSUES:

Whether the monthly warehousing charge and associated insurance storage charge are dutiable.

2

Whether the unused fabric that is sold overseas at a lower price than the purchase price, is dutiable; and if so, at which value, the purchase price or the lower, subsequent sale price.

Whether the value of the non-imported, defective fabric identified on the cut scale is dutiable.

LAWS AND ANALYSIS:

For the purposes of this ruling request, we are assuming that none of the parties to the transaction are related within the meaning of section 402(g) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 TAA.

The primary basis of appraisement is transaction value pursuant to section 402h of the TAA. Transaction -illegible- defined as the "price actually paid or payable for the merchandise when sold for exportation to the United States plus certain enumerated additions, one of which is the value of any assist. Section 402(h) of the TAA provides for the following:

The term 'assist' means any of the following if supplied directly or indirectly, and free of charge or at reduced cost by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise: (i) Materials, components, parts and similar items incorporated in the imported merchandise.

Based upon the information provided in your letter, we find that the transaction between the importer and the CMT vendor represents a sale for exportation to the United States, under section 402(b) of the TAA, and may, therefore, be the basis for a proper transaction value.

The fabric that is provided to the CMT vendor constitutes an assist, the value of which will be represented by the sum of the price paid to the foreign manufacturer to purchase the fabric and the transportation and related costs incurred in shipping the fabric from the place of manufacture to the CMT vendor. (See the Statement of Administrative Action.)

3

With regard to the first issue, you have indicated two possible scenarios: in one the importer pays the warehousing and related insurance charge to a third unrelated party. In the other, the importer pays the warehousing and related insurance charge to the seller. In the first scenario the warehousing and insurance charges are not dutiable. Customs has held that when warehousing charges paid separately to a third party, unrelated to the seller, such charges are not part of the price actually paid or payable. (See Headquarters Ruling Letter 542569, dated July 16, 1985.)

In the second scenario, the warehousing and related insurance charges would be dutiable. In that regard, we note that the price actually paid or payable is defined in section 402(b)(4)(A) of the TAA as: "the total payment (whether direct or indirect...) made, or to be made, for the imported merchandise by the buyer to, or for the benefit of, the seller." Accordingly, in *General Sports Company v. United States*, Slip Op. 90-11 (1990), the court held that it was reasonable for Customs to conclude that the entire payment made to the seller for quota charges, was "for imported merchandise" within the meaning of subsection 1401(a)(4)(A). This is in keeping with our position previously set forth in TAA #6 that all moneys paid to the foreign seller are part of the price actually paid or payable. More specifically, Customs held in HRL 543501, dated May 2, 1985, that payments made to the seller of the imported merchandise for warehousing and storage charges are part of the price actually paid or payable. Consequently, we find that in those instances where the importer pays the seller warehousing and related insurance charges, such charges are part of the price actually paid or payable. With regard to the second issue, we find that the non-defective fabric that is not used, but rather resold abroad, is never imported into the United States and is not part of the assist provided to the CMT vendor. Therefore, we find that the value of the unused fabric is not included in the transaction value of the imported product. Lastly, with regard to the third issue, we note that Customs specifically held in HRL 543924, dated May 29, 1985, that excess fabric which is not utilized or otherwise incorporated into the final imported merchandise is not considered to be an assist. Therefore, that fabric which is not used by the CMT vendor and, therefore, never imported, does not constitute part of the dutiable value of the assist.

4

HOLDING:

Under the circumstances of this case and for the reasons cited above, we find that warehousing and associated insurance charges are not dutiable when such charges are paid to a third party unrelated to the seller. When warehousing and associated insurance charges are paid to the seller, such costs are dutiable as part of the price actually paid or payable.

Unused, non-defective fabric that is purchased abroad, resold abroad and never imported is not dutiable.

Fabric purchased abroad and provided to CMT vendor, which is neither used nor incorporated into the final imported merchandise is not considered to be an assist.

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Sincerely

Cohn Durant, Director

Commercial Rulings Division